

DANIEL MALAKAUSKAS, *Cal. Bar. No.*: 265903
MALAKAUSKAS LAW, APC
7345 South Durango Drive
Suite B-107-240
Las Vegas, NV 89113
Tel: 866-790-2242 / Fax: 888-802-2440
daniel@malakauskas.com

Attorney for Plaintiff: Meryl Pomponio

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MERYL POMPONIO,

Plaintiff,

v.

POKEFAM, LLC, as an entity and doing business as “Pokeatery”, **NEIL B. GOODHUE**, as an individual and trustee of the Sandringham Trust UTD 8/4/1999. **DIANE C. GOODHUE**, as an individual and trustee of the Sandringham Trust UTD 8/4/1999, and **DOES 1-50**, Inclusive,

Defendants.

Case No.:

COMPLAINT BY MERYL POMPONIO AGAINST POKEFAM, LLC, *et al.*, FOR DAMAGES AND INJUNCTIVE RELIEF RESULTING FROM VIOLATIONS OF 1) TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990; 2) THE UNRUH CIVIL RIGHTS ACT; and 3) THE CALIFORNIA DISABLED PERSONS ACT.

[42 U.S.C. §§ 12101-12213; Cal. Civ. Code §§ 51, 52, 54, 54.1, 54.2 and 54.3.]

Comes now the Plaintiff, MERYL POMPONIO, (hereafter, “Ms. Pomponio” or “Plaintiff”) through her Attorney, DANIEL MALAKAUSKAS, 7345 South Durango Drive, Suite B-107-240, Las Vegas, NV 89113; Telephone: (866) 790-2242; Facsimile: (888) 802-2440; who, having been denied her civil rights, hereby respectfully alleges, avers, and complains as follows:

THIS COURT CAN GRANT JUSTICE TO A DISABLED INDIVIDUAL

COMPLAINT BY POMPONIO AGAINST POKEFAM, LLC, *ET AL.*, FOR DAMAGES AND INJUNCTIVE RELIEF

1 1. Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic
2 Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is
3 confined to using a mobility device to complete her day to day activities.
4

5 2. In June 2019, and on two separate occasions in August and September 2019, Ms.
6 Pomponio was denied the full and equal access to a public accommodation located at 1345 Newell
7 Avenue, Suite B, Walnut Creek, CA 94596.

8 3. Ms. Pomponio now asks that this Court stand up for her rights under the Americans with
9 Disabilities Act ("ADA"), the Unruh Civil Rights Act ("UCRA") and the California Disabled Persons
10 Act ("CDPA").
11

12 **THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA,**
13 **OAKLAND DIVISION, HAS JURISDICTION AND IS THE PROPER VENUE FOR**
14 **PLAINTIFF TO SEEK JUSTICE**

15 4. The United States District Court has original federal question jurisdiction over this action
16 pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) and (a)(4), for violations of the Americans with
17 Disabilities Act, 42 U.S.C. §§ 12101, *et seq.* This Court has supplemental jurisdiction over all state
18 claims, including, but not limited to, claims under the Unruh Civil Rights Act, Cal. Civ. Code § 51, *et*
19 *seq.*, and/or the California Disabled Persons Act, Cal. Civ. Code §§ 54-55.3, pursuant to 28 U.S.C. §
20 1367 as such acts not only expressly incorporate the Americans with Disabilities Act, but such state
21 law claims also arose from the same nucleus of operative facts or transactions.
22

23 5. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) as the claims alleged herein
24 arose in the Northern District, specifically at the real property located at 1345 Newell Avenue, Suite
25 B, Walnut Creek, CA 94596.
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1 6. The Oakland Division of the Northern District of California, is the proper division
2 because all claims herein arose at the real property located at 1345 Newell Avenue, Suite B, Walnut
3 Creek, CA 94596.
4

5 **THE VICTIM AND THOSE RESPONSIBLE**
6

7 7. Ms. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic
8 Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is
9 confined to using a mobility device to complete her day to day activities. Ms. Pomponio is therefore
10 a "person with a disability" and a "physically disabled person" and has a "disability" or "medical
11 condition" pursuant to the rules and regulations of the ADA, specifically 42 U.S.C § 12102 and Cal.
12 Civ. Code §§ 51 and 54.
13

14 8. Defendants, POKEFAM, LLC, and Does 1-50 (hereafter, collectively or individually,
15 "Tenant"), operate as a business establishment, hold themselves out to the public, and do business as
16 "Pokeatery" at 1345 Newell Avenue, Suite B, Walnut Creek, CA 94596., and have substantial control
17 over the interior and exterior of the building, the parking lot, and all spaces adjacent to such building.
18

19 9. Defendants, NEIL B. GOODHUE, DIANE C. GOODHUE, and Does 1-50 (hereafter,
20 collectively or individually, "Landlord", in their commercial real estate investment, owner, or landlord
21 capacity), own, operate, manage, and have substantial control over the real property, including the
22 interior and exterior of the building, parking lot and all spaces adjacent to the buildings located at 1345
23 Newell Avenue, Suite B, Walnut Creek, CA 94596.
24

25 10. Defendants, Does 26-50, are individuals, businesses, organizations, or entities which
26 entered into a contract with Defendants, Tenant, Landlord, and/or Does 1-50, as property managers or
27 franchisees for the real property and adjacent parking lot, and as such have substantial control over the
28 real property located at 1345 Newell Avenue, Suite B, Walnut Creek, CA 94596.

1 11. The true names and capacities of the Defendants named herein as Does 1-50, inclusive,
2 whether individual, corporate, partnership, association, or otherwise, are unknown to Plaintiff who
3 therefore sues these Defendants by such fictitious names. Plaintiff requests leave of court to amend this
4 complaint to allege their true names and capacities at such times as they are ascertained.
5

6 12. Plaintiff is informed and believes and thereon alleges that each of the Defendants,
7 including Does 1-50, caused and are responsible for the below described unlawful conduct and
8 resulting injuries by, among other things, personally participating in the unlawful conduct or acting
9 jointly or conspiring with others who did so; by authorizing, acquiescing in or setting in motion
10 policies, plans or actions that led to the unlawful conduct; by failing to take action to prevent the
11 unlawful conduct; by failing and refusing with deliberate indifference to Plaintiff's rights to equal
12 access to public spaces; and by ratifying the unlawful conduct that occurred by agents, and officers or
13 entities under their direction and control.
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16 **MS. POMPONIO WAS DENIED EQUAL ACCESS TO A**
17 **PUBLIC ACCOMMODATION AND NOW FIGHTS FOR ALL DISABLED**

18 13. Ms. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic
19 Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is
20 confined to using a mobility device to complete her day to day. Mrs. Pomponio is therefore a "person
21 with a disability" and a "disabled person" and has a "disability" or "medical condition" pursuant to
22 federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104.
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24 14. In June 2019, and on two separate occasions in August and September 2019, Ms.
25 Pomponio desired to go to and use the services, and/or buy products at "Pokeatery" which is located at
26 1345 Newell Avenue, Suite B, Walnut Creek, CA 94596.
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1 15. While in the parking lot adjacent to, surrounding, or while inside the business
2 “Pokeatery”, Ms. Pomponio personally encountered barriers that interfered with her ability to use and
3 enjoy the goods, services, privileges and accommodations offered by the facilities. Specifically, on
4 multiple occasions, while visiting the business establishment, Ms. Pomponio had difficulty as there
5 was no alleged accessible parking stall. This made it difficult for Ms. Pomponio to find parking. In
6 addition, Ms. Pomponio had difficulty as the restroom was inaccessible. The restroom door had
7 improper hardware making it difficult to open. In addition, the restroom failed to have any clear floor
8 space under the lavatory making it difficult to reach from her wheeled device. Finally, there were not
9 enough accessible dining surfaces making it more difficulty for Ms. Pomponio to find a place to eat
10 her food. Ms. Pomponio experienced these various difficulties during her three visits to the
11 establishment.
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14 16. Despite Ms. Pomponio’s wish to patronize the businesses in the future, the above-
15 mentioned barriers constitute deterrents to access to the business, rendering the business’ goods,
16 services, facilities, privileges, advantages, and accommodations unavailable to physically disabled
17 patrons such as herself.
18

19 17. Ms. Pomponio alleges, on information and belief, that Defendants knew that such
20 barriers existed and that Defendants’ failure to remove the barriers was intentional as the particular
21 barriers mentioned above were intuitive and obvious. Additionally, Defendants exercised control and
22 dominion over the condition of the real property and building and had the financial resources to remove
23 such barriers. Furthermore, Ms. Pomponio alleges, on information and belief, that such modifications
24 were readily achievable as removal of the above barriers could have been achieved without much
25 difficulty or expense.
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18. Ms. Pomponio brings this lawsuit to encourage Defendants to ensure their property is accessible to all.

**FIRST CLAIM
VIOLATION OF TITLE III OF THE ADA
(As to all Defendants)**

19. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

20. The parking lot and building at the real property known as 1345 Newell Avenue, Suite B, Walnut Creek, CA 94596. is owned, controlled, operated, leased, and managed by Defendants: Tenant, Landlord, Does 1-50, or their agents. The business “Pokeatery”, including their parking lot, are open to the general public and as such is a “public accommodation” under 42 U.S.C. § 12181 and 28 C.F.R. § 36.104.

21. Pursuant to 42 U.S.C. § 12182(a), by owning, leasing, or operating the public accommodation known as “Pokeatery”, Defendants are prohibited from discriminating against Plaintiff by denying her, on the basis of her disability, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered by the facilities.

22. In order to avoid discriminating against a disabled individual pursuant to 28 C.F.R. § 36.101 and § 36.102, Defendants must ensure that such public accommodation is designed, constructed, and altered in compliance with the accessibility standards established by 28 C.F.R. § 36.101 *et seq.*, and have proper policies, practices, and procedures to ensure that individuals with disabilities are afforded equal access to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation. 42 U.S.C. §§ 12181(9), 12182(b)(2)(A)(iv) and (v), 12183(a)(1) and (2).

23. Ms. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is confined to using a mobility device to complete her day to day. Mrs. Pomponio is therefore a "person with a disability" and a "disabled person" and has a "disability" or "medical condition" pursuant to federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104. While at the interior, exterior, parking lot, or adjacent spaces, of the business known as "Pokeatery", Plaintiff personally encountered a number of barriers that interfered with her ability, to use and enjoy the goods, services, privileges and accommodations offered at the facility.

24. Specifically, Defendants failed to ensure that such real property was equally accessible to individuals with disabilities and medical conditions by having the following barriers at the real property:

- a. The alleged accessible parking space fails to have "VAN ACCESSIBLE" identification signage in violation of 1991 ADAAG 4.6.1, 2010 ADAS 502.6, 2013 CBC 11B502.6, 2016 CBC 11B-502.6;
- b. The alleged accessible parking space fails to have "MINIMUM FINE \$250" identification signage in violation of 2013 CBC 11B-502.6.2, 2016 CBC 11B-502.6.2;
- c. The alleged accessible parking space identification signage is not provided in violation of 1991 ADAAG 4.6.4, 2010 ADAS 502.6, 2013 CBC 11B-502.6 and 2016 CBC 11B-502.6;
- d. There is not enough accessible parking provided in violation of 1991 ADAAG 4.1.2 (5)(a), 2010 ADAS 208.1, 2013 CBC 11B-208.1 and 2016 CBC 11B-208.1;
- e. There are no accessible routes provided within the site from accessible parking spaces and accessible passenger loading zones, public streets and sidewalks, and public transportation

- 1 stops to the accessible building or facility entrance they serve in violation of 1991 ADAAG
2 4.3.2(1), 2010 ADAS 206.2.1, 2013 CBC 11B-206.2.1 and 2016 CBC 11B-206.2.1;
- 3 f. An accessible route connecting accessible buildings, accessible facilities, accessible
4 elements, and accessible spaces on the same site are not provided in violation of 1991
5 ADAAG 4.1.2 (2), 2010 ADAS 206.2.2, 2013 CBC 11B-206.2.2 and 2016 CBC 11B-
6 206.2.2;
- 7 g. There are not enough accessible dining surfaces provided in violation of 1991 ADAAG
8 5.1, 2010 ADAS 226.1, 2013 CBC 11B-226.1, 2016 CBC 11B-226.1;
- 9 h. The public restroom is not accessible in violation of 1991 ADAAG 4.22, 2010 ADAS
10 213.1, 2013 CBC 11B-213.1 and 2016 CBC 11B-213.1;
- 11 i. The restroom door hardware requires tight grasping, pinching, or twisting of the wrist to
12 operate in violation of 1991 ADAAG 4.13.9, 2010 ADAS 404.2.7, 2013 CBC 11B-404.2.7
13 and 2016 CBC 11B-404.2.7;
- 14 j. The clear floor space is not provided at lavatory in violation of 1991 ADAAG 4.19.2, 2010
15 ADAS 606.2, 2013 CBC 11B-606.2 and 2016 CBC 11B-606.2;
- 16 k. The lavatory fails to have any knee or toe clearance in violation of 1991 ADAAG 4.19.2,
17 2010 ADAS 606.2, 2013 CBC 11B-606.2, and, 2016 CBC 11B-606.2.

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22 25. As a direct and proximate cause of Defendants' conduct, Plaintiff, on the basis of her
23 disabilities, was denied the opportunity to participate in or benefit from a good, service, privilege,
24 individuals in violation of 42 U.S.C. § 12181.

25
26 26. Plaintiff seeks injunctive relief to prohibit Defendants' acts and omissions as complained
27 of herein which have the effect of wrongfully discriminating against Plaintiff and other members of the
28 public who are physically disabled from full and equal access to these public facilities. Specifically,

1 Plaintiff seeks injunctive relief ensuring that Defendants modify their real property to ensure that
2 disabled persons are not discriminated against in receiving equal access to goods, services, and facilities
3 as other more able-bodied persons.
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6 **SECOND CLAIM**
7 **VIOLATIONS OF CALIFORNIA CIVIL CODE § 51**
8 **(As to all Defendants)**

9 27. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every
10 allegation contained in all prior and subsequent paragraphs.

11 28. Any violation of the ADA 42 U.S.C. §§ 12101-12213 also constitutes a violation of Cal.
12 Civ. Code § 51(f) and § 52(a), thus independently justifying an award of damages and injunctive relief
13 pursuant to California law.

14 29. On the basis of her disabilities, Plaintiff was denied the opportunity to participate in or
15 benefit from a good, service, privilege, advantage or accommodation in a manner equal to that afforded
16 to other non-disabled individuals which resulted in Plaintiff's difficulty, discomfort, or embarrassment.
17 Therefore, pursuant to Cal. Civ. Code § 55.56(a) through (c), Plaintiff is entitled to attorneys' fees,
18 costs, and damages of no less than four-thousand U.S. dollars (4,000 USD) for each and every violation.
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21 **THIRD CLAIM**
22 **VIOLATIONS OF CALIFORNIA CIVIL CODE § 54**
23 **(As to all Defendants)**

24 30. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every
25 allegation contained in all prior and subsequent paragraphs.

26 31. Any violation of the ADA 42 U.S.C. §§ 12101-12213 also constitutes a violation of Cal.
27 Civ. Code § 54.1(d) and § 54.3(a), thus independently justifying an award of damages and injunctive
28 relief pursuant to California law.

32. On the basis of her disabilities, Plaintiff was denied the opportunity to participate in or benefit from a good, service, privilege, advantage or accommodation in a manner equal to that afforded to other non-disabled individuals, which resulted in Plaintiff's difficulty, discomfort or embarrassment. Therefore, pursuant to Cal. Civ. Code § 55.56(a) through (c), Plaintiff is entitled to attorneys' fees, costs, and damages on no less than one-thousand U.S. dollars (1,000 USD) for each and every violation.

PRAYER

WHEREFORE, Plaintiff prays the following:

1. For injunctive relief directing Defendants to modify their facilities and policies as required by law to comply with ADA regulations, including the ADAAG where required; institute policy to enable Plaintiff to use goods and services offered to the non-disabled public; provide adequate access to all citizens, including persons with disabilities; issue a permanent injunction directing Defendants to maintain their facilities usable by Plaintiff and similarly situated person with disabilities in compliance with federal regulations, and which provide full and equal access, as required by law;

2. Retain jurisdiction over Defendants until such time as the Court is satisfied that Defendants' unlawful policies, practices, acts and omissions, and maintenance of inaccessible public facilities as complained of herein no longer occur and will not recur;

3. Award Plaintiff all appropriate damages, including, but not limited to, either statutory damages of no less than four-thousand U.S. dollars (4,000 USD) for each and every violation of Cal. Civ. Code § 51, or no less than one-thousand U.S. dollars (1,000 USD) for each and every violation of Cal. Civ. Code § 54, with either Cal. Civ. Code § 51 or § 54 being elected prior to, or at, trial, but not both, and general damages in an amount within the jurisdiction of the Court, according to proof;

7 | Dated: May 26th, 2020

By: DANIEL MALAKAUSKAS, of,
MALAKAUSKAS LAW, APC,
Attorney for PLAINTIFF,
Meryl Pomponio